



# STATE OF INDIANA

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March 20, 2012

Mr. Rocky M. Shroyer  
5501 South 1100 West  
Westville, Indiana 46391

*Re: Formal Complaint 12-FC-52; Alleged Violation of the Access to Public Records Act by the Allen County Sheriff's Department*

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Allen County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* John O. Feighner, Attorney, responded on behalf of the Department. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that on January 23, 2012<sup>1</sup>, you submitted a written request to the Department for a copy of booking records and booking photographs of Rachel Oberlin, which were prepared by the Department and taken on or about February 3, 2011. On January 31, 2012, the Department responded to your request and provided that it was under no obligation to mail you a copy of the records that were responsive to your request. You have offered to pay in advance for all copying and postage fees and that no other agency has ever refused to mail you records in response to a public records request.

In response to your request, Attorney Feighner advised Department received your written request dated January 24, 2012. On January 31, 2012, Captain Ron Rayl responded in writing to your request and advised that the Department has agreed to make the booking records and photographs of Ms. Oberlin available for inspection and copying pursuant to I.C. § 5-14-3-3. Captain Rayl timely responded to your request pursuant to the requirements of I.C. § 5-14-3-9(b). As such, the Department complied with the APRA in responding to your request. The APRA does not affirmatively require any

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<sup>1</sup> You have alleged that you made an identical request of the Department on October 26, 2011, that was denied for the same reasons as outlined in the Department's January 31, 2012 denial. A person filing a formal complaint with the Public Access Counselor's Office must file the complaint not later than thirty days after the denial. *See* I.C. § 5-14-5-7(a)(1). Accordingly, all issues alleged regarding the October 26, 2011 denial will not be addressed as that section of your formal complaint was not timely filed.

public agency to mail records to a requesting party. *See Opinions of the Public Access Counselor 02-FC-05, 06-FC-91, 07-FC-55.* The Department has agreed to allow you to inspect and copy any of the records that you have requested. Pursuant to I.C. § 5-14-3-3(b), the Department is permitted to either provide the requested copies to the person making the request or allow the person to make copies on either the agency's equipment or the person's own equipment. The Department has consistently advised that you are free to inspect and make copies of the requested records. Further, I.C. § 5-14-3-5 provides that in regards to arrest and jail records, the requested records "shall be made available for inspection and copying" which the Department has made available in response to your request.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See I.C. § 5-14-3-1.* The Department is a public agency for the purposes of the APRA. *See I.C. § 5-14-3-2.* Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See I.C. § 5-14-3-3(a).*

A request for records may be oral or written. *See I.C. § 5-14-3-3(a); § 5-14-3-9(c).* If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See I.C. § 5-14-3-9(a).* If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See I.C. § 5-14-3-9(b).* Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See I.C. § 5-14-3-9(c).* A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Department responded to your written request within the time guidelines provided by section 9 of the APRA.

The APRA provides that any person may inspect and copy the public records of any public agency, except as provided in the exceptions listed in section 4 of the APRA. *See I.C. 5-14-3-3(a).* A public agency may not deny or interfere with the exercise of the right stated in subsection (a). *See I.C. 5-14-3-3(b).* The public agency shall either:

- (1) provide the requested copies to the person making the request; or
  - (2) allow the person to make copies:
    - (A) on the agency's equipment, or
    - (B) on his own equipment.
- IC § 5-14-3-3(b).

Indiana law provides the following regarding copies of public records:

If:

(1) a person is entitled to a copy of a public record under this chapter;

and

(2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the public record; the public agency must provide at least one (1) copy of the public record to the person. However, if a public agency does not have reasonable access to a machine capable of reproducing the record or if the person cannot reproduce the record by use of enhanced access under section 3.5 of this chapter, the person is only entitled to inspect and manually transcribe the record. A public agency may require that the payment for copying costs be made in advance. I.C. § 5-14-3-8(e).

While Section 3(b) of the APRA indicates an agency shall either provide copies or allow access to records, Section 8(e) makes it clear an agency is to provide copies when it has reasonable access to a machine capable of reproducing the record. *See* I.C. §5-14-3-8(e) and I.C. §5-14-3-3(b). Counselor Neal addressed a similar issue and provided:

“The Auditor here asserts the word “provide” in Section 8(e) does not mean the agency must make the copies. “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). “Provide” means to “supply or furnish,” to “afford or yield,” or “to prepare, make ready, or procure beforehand.” *New Illustrated Webster’s Dictionary of the English Language* 780 (1992). Further, “provide” as used in Section 3(b)(1) clearly means the public agency is to make a copy, as it is followed by “or” and then Section 3(b)(2), which allows the requester to make a copy. We must assume provide was used by the legislature to convey the same meaning in the two different sections. As such, I agree with previous public access counselors that Sections 3(b)(1) and 8(e) together to require a public agency to make copies of records upon request when the agency has reasonable access to a copy machine.” *Opinion of the Public Access Counselor 07-FC-223*.

The APRA permits a public agency to charge a fee for copies of public records. *See* I.C. § 5-14-3-8. Public agencies may require a person to pay the copying fee in advance. *See*

I.C. § 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124.*

The APRA does not specifically require that a public agency mail records in response to a public records request. *See Opinion of the Public Access Counselor 02-FC-05; 05-FC-264; 06-FC-91.* This Office has stated that it is reasonable and *strongly encourages* public agencies to send copies of records to the requester via the U.S. Postal Service where the requester has paid for the applicable postage costs in advance; however the APRA does not specifically provide that the agency would be required to do so (emphasis added). *See Opinion of the Public Access Counselor 09-FC-13; 09-FC-221; 10-FC-59; 12-FC-36.* As the Department has made available all records that are responsive to your request, it is my opinion that the Department did not violate the APRA by not mailing the records to you.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage  
Public Access Counselor

cc: John O. Feighner